

102

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA No. 110 of 2014(O&M)**

**Date of Decision: 29.08.2016**

**Braham Singh and anr.**

**....Appellants**

**Vs**

**Rajan and anr.**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. B.B. Sharma, Advocate,  
for the applicants-appellants.

Mr. Adarsh Jain, Advocate,  
for the caveator.

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**RAJ MOHAN SINGH, J.**

**CM-1172-C-2016**

This application is under Order 41 Rule 27 read with Section 151 for producing additional evidence. Applicant seeks to place on record certain documents as additional evidence. The allotment of contract by the respondent No. 2, Municipal Corporation for laying dia sewer line in gali No. 54 and 63 in Sanjay Colony is a bone of contention in the application for adducing additional evidence. The additional evidence sought to be lead will not dislodge the nature of street from private to public street. Firstly, the street was not recorded to be public street in the record of Municipal Corporation, nor any cogent evidence could be led by the plaintiff to show that the street in question was a public street. Secondly, merely

by allotting tender for laying sewer line in the guli No. 54 and to connect it through street No. 63 will not ipso facto change the nature of street from private to public street. The evidence sought to be produced is not relevant, nor the same is appropriate to be taken on record at this stage. The evidence in question will not enable the Court to decide the case differently than the one as observed in the main case. Resultantly no ground is made out to allow additional evidence in terms of Order 41 Rule 27 CPC. This application is accordingly dismissed.

**CM-240-C-2014**

For the reasons mentioned in the application, delay of 3 days in filing the appeal is condoned.

**CM-241-C-2014**

For the reasons mentioned in the application, delay of 202 days in re-filing the appeal is condoned.

**Main case**

Plaintiff is in second appeal against concurrent judgment and decrees passed by the courts below in a suit for permanent injunction. Plaintiffs filed a suit for permanent injunction alleging that the plaintiffs and other residents of Sanjay Colony Sector-22, Faridabad have been using the rasta sare-aam i.e. street No. 63, consisting of pacca kharonja by MCF shown in green colour. The house of the plaintiff was situated suitably in front of Gali which is adjacent to road 33' wide towards western side. Plaintiff asserted that there was a path sare-aam i.e. street No. 63 and the defendant was adamant to encroach upon the street at point A and B and to block

the passage. With this background, the suit in question came to be filed.

Defendant No. 1 contested the suit on all counts, thereby alleging that defendant and his brother namely Raju had purchased plots No. 8A, 9A and 9B out of khasra No. 68/5 measuring 218 sq. yards situated within the revenue estate of village Saran vide registered sale deed dated 30.12.1981. After the purchase of the land/plots from Birpal, Rattan, Likhi, Bhagwan Dass, they constructed some portion of land as depicted in the written statement. Defendant No. 1 asserted that the vacant plots were purchased by Birpal, Dayawati and Rajan in the eastern side of the property from Yudhbir son of Sri Ram. Birpal and Rajan had purchased the land from Yudhbir, Dayawati wife of Bir Pal had also purchased the plot from one Lalit Bhatia wife of Chander Sain Bhatia vide registered sale deed.

Defendant further pleaded that there was no rasta from the plot No. 8A, 9A and 9B to the plaintiffs and other persons. The plaintiffs and other persons of Sanjay colony have no connection whatsoever with the plots owned and possessed by the defendants and his brother which they had purchased from Birpal etc.

Defendant No. 2 also denied the factum of land in question to be part of street No. 63. Street was not recorded to be municipal street in the record of Municipal Corporation of Faridabad. Even the stand of the MCF was that the suit land in question was not a public street. But in passing reference the MCF has stated that MCF has no objection in case the street in question is treated to be a public

street.

After necessary pleadings and framing of issues both the parties led evidence. Plaintiff besides appearing himself as PW-1 examined other witnesses to assert that the street in question was a public street and the plaintiff and others have been using the same as path/rasta sare-aam.

On the other hand, defendants examined official Dalip Singh Clerk from MCF as DW-3 besides examining defendant No. 1 as DW-1 and Giriraj Singh as DW-2. The official witness DW-3 deposed on the strength of summoned record. As per record document Ex. DW-3/8 was not recorded to be public street in the record of municipal corporation. DW-4 Sukhbir Singh, ARC also deposed on the strength of the summoned record. DW-5 Hawa Singh, JE also recorded his statement on the basis of official record that the disputed street was in existence in private colony and the plaintiff is not the owner of the same.

The official of MCF i.e. Ravinder Kumar, while appearing as PW-5 could not tell the gali No. attached to house No. 513 and 563. The witness could not prove the nature of street to be public street. It was also brought on record that the department never acquired any land regarding the street in question. The witness could not tell what was constructed on the sides of the street. Measurement of the street were not known to the witness. The testimony of the witness was not considered to be sufficient to prove the plaintiffs case. It was also admitted by the plaintiff himself that in site plan Ex. P3 at point A, there was a vacant plot. Cumulative reading of the statement of

DW-1, PW3, photographs Ex. PW4/1 to PW4/3, site plan Ex. P3 and sale deed Ex. D2 would show that there were vacant plots in between 33 feet wide road and street No. 63. There was admission of PW-3 Ram Dular that these plots were already sold. Mark A and B as shown in Ex. P3 were vacant plots belonging to the defendant. This was the admission of the plaintiff himself and the perusal of the sale deed clearly revealed that joint area of 218 Sq. Yard was sold to the defendant and such area cannot be presumed to be in existence in the form of street between the joint area at point A and B. The specific stand taken by the Municipal Corporation, Faridabad was that the street in question was not a public street however, respondent No. 2 requested for considering the street in the interests of general public. No conclusive evidence could be led on that score.

Both the Courts have concurrently held that the plots purchased by the defendant cannot be declared to be street as no other house/shop of building abuts for open in the disputed portion shown with point A and B in the site plan Ex. P-3. There was an admission on the part of the plaintiffs witness namely Ganga Prasad while appearing as PW-2 in respect of existence of shops of defendant No.1. On this portion Ram Dular PW-3 also admitted existence of some boundary wall. The evidence of the plaintiff viz. photograph P6 to P8 also demonstrated that a foundation was dugged. On the basis of evidence of the plaintiff himself, the case of defendant no. 1 was proved to the hilt. The official witnesses viz. PW-5 Ravinder Kumar, Hawa Singh categorically deposed that the Municipal Corporation have not undertaken any brick line in the

street nor maintained the same from Municipal funds. In nutshell, the stand of the Municipal Corporation was that the street in question was not a public street as per their record.

In view of concurrent findings given by both the Courts below the plea of the appellant that the Municipal Corporation had invited tenders for laying sewerage over the land in question cannot be accepted particularly when as per the stand of Municipal Corporation it is not a public street. Even if, some tenders are invited for laying a sewerage pipe line in the street at the instance of the Municipal Corporation that itself is not sufficient to hold that the street was vested in the Municipal Corporation. At the most that can be an omission on the part of the Municipal Corporation or may be due to any other consideration, but certainly that does not give any right to the Municipal Corporation to claim the street to be public street without there being any evidence in their record.

In view of concurrent finding of facts recorded by the Courts below, this Court does not consider it to be a fit case for interference. No law point much less substantial questions of law involved for consideration by this Court. The appeal is totally bereft of merits and the same is accordingly dismissed.

**29.08.2016***sumit***(RAJ MOHAN SINGH)  
JUDGE***Whether Reasoned/Speaking**Yes/No**Whether Reportable**Yes/No*